

Message Text

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ORIGIN EA-12

INFO OCT-01 ISO-00 EB-08 AID-05 CIAE-00 COME-00 FRB-01
INR-10 NSAE-00 ICA-20 TRSE-00 XMB-04 OPIC-06
SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15 STR-07
CEA-01 /103 R

DRAFTED BY EA/J:H A COCHRAN:EH
APPROVED BY EA/J:N PLATT
EB/IFD/BP:T SCHLENKER
-----056716 101233Z /75
R 092358Z MAY 78
FM SECSTATE WASHDC
TO AMEMBASSY TOKYO

UNCLAS STATE 118512

E.O. 11652:N/A

TAGS: EGEN

SUBJECT: VISIT OF US ANTITRUST OFFICIALS

1. IN VIEW OF UPCOMING VISIT OF US ANTI-TRUST OFFICIALS TO
TOKYO, BELIEVE FOLLOWING ARTICLE FROM MAY 8 WALL STREET
JOURNAL WILL PROVIDE EMBASSY WITH SOME USEFUL GENERAL BACK-
GROUND ON ANTITRUST.

2. BEGIN TEXT.

3. MANAGER'S JOURNAL. BY TIMOTHY D. SCHELLHART. MAY 8,
1978.

4. ANTITRUST'S "NAUGHTY" WORDS.

5. WASHINGTON-- "WE'LL CUT PRICES SO LOW OUR COMPETITORS
WILL BE CUT OFF AT THE KNEES."

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6. "TO YOU, LARRY, AND TO YOU ALONE, THE PRICE WE CHARGE
WILL BE BELOW COST."

7. "WE'LL SCURRY TO BECOME THE INDUSTRY LEADERS WITH
THE ULTIMATE GOAL OF GRABBING AT LEAST 40 PERCENT OF ALL
BUSINESS."

8. THOSE COMMENTS ARE AMONG WHAT CHICAGO ATTORNEY JOHN LOUGHLIN TERMS THE "NAUGHTY" WORDS OF ANTITRUST. THEY ARE THE KINDS OF STATEMENTS BY AGGRESSIVE CORPORATE MANAGERS AND SALES PEOPLE THAT CAN TRIGGER COSTLY ANTITRUST SUITS FOR EMPLOYERS.

9. THAT IS ONE REASON WHY MR. LOUGHLIN AND OTHER ANTI-TRUST SPECIALISTS SAY COMPANIES, NO MATTER HOW SMALL, SHOULD EDUCATE EMPLOYEES ABOUT ANTITRUST LAWS AS PART OF A SO-CALLED ANTITRUST COMPLIANCE PROGRAM. THESE PROGRAMS CAN BE AS SIMPLE AS PROVIDING KEY EMPLOYEES WITH THUMB-NAIL SKETCHES OF ANTITRUST LAWS, LANDMARK CASES AND THE COMPANY'S POLICY TOWARD ANTITRUST. OR THEY CAN INVOLVE REQUIRING LARGE NUMBERS OF EMPLOYEES TO ATTEND SEMINARS AND DETAILED PRESENTATIONS ON HOW TO AVOID ANTI-COMPETITIVE DEALINGS.

10. THE REASONS FOR CREATING SUCH PROGRAMS ARE INCREASINGLY OBVIOUS. THE NUMBER OF ANTITRUST SUITS FILED BY FEDERAL, STATE AND PRIVATE PARTIES HAS TRIPLED IN THE PAST DECADE. AND IN 1976 CONGRESS MADE FEDERAL ANTITRUST VIOLATIONS FELONIES RATHER THAN MISDEMEANORS AND SET MORE SEVERE PENALTIES--UP TO A \$1 MILLION FINE FOR CONVICTED CORPORATIONS AND UP TO A \$100,000 FINE AND THREE YEARS IN PRISON FOR CONVICTED INDIVIDUALS.

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11. FURTHERMORE, THE COSTS OF DEFENDING AGAINST SUCH LAW-SUITS HAVE BECOME "EXPENSIVE, TIME-CONSUMING AND ARDUOUS," SAYS CYRUS ANDERSON, WHO RECENTLY RETIRED AS VICE PRESIDENT FOR LAW OF PPG INDUSTRIES INC. MR. ANDERSON SET UP A COMPLIANCE PROGRAM AT THE PITTSBURGH-BASED COMPANY THREE DECADES AGO AND HAS BEEN GIVING POINTERS TO OTHER COMPANIES SINCE.

12. MOST MAJOR COMPANIES HAVE ESTABLISHED SOME KIND OF ANTITRUST EDUCATION PROGRAM. AMERICAN TELEPHONE AND TELEGRAPH CO. HAS A SEMINAR-TYPE PROGRAM THAT REACHES MORE THAN 80,000 OF ITS PERSONNEL. TEXAS INSTRUMENTS CO. HOLDS A SESSION EVERY SIX MONTHS WITH ITS MARKETING AND SALES MANAGERS; CORPORATE ATTORNEYS ACCENT THEIR PRESENTATIONS WITH ANTITRUST-ORIENTED FILM STRIPS PREPARED BY THE COMPANY'S OWN LEARNING CENTER IN DALLAS.

13. BUT MANY SMALL AND MEDIUM-SIZED COMPANIES HAVEN'T CONCERNED THEMSELVES WITH THE ANTITRUST-LIABILITY PROBLEM, AND THEY MAY RUN GREATER RISK OF BEING SUED SOMEDAY, SAYS JOHN SHENEFIELD, THE FEDERAL GOVERNMENT'S

ANTITRUST CHIEF. JUSTICE DEPARTMENT STATISTICS DRAMATIC-

ALLY SHOW THE RISKS. IN THE PAST FIVE YEARS, THE DEPARTMENT'S ANTITRUST DIVISION HAS BROUGHT PRICE-FIXING SUITS AGAINST 263 COMPANIES WITH ANNUAL SALES OF LESS THAN \$5 MILLION EACH, BUT IT HAS FILED SUCH SUITS AGAINST ONLY 47 OF THE FORTUNE 500 COMPANIES.

14. "OF THE COMPANIES WE INDICT FOR ANTITRUST VIOLATIONS, MOST HAVE NO COMPLIANCE PROGRAM AT ALL, AND THOSE THAT DO TEND TO HAVE SUPERFICIAL PROGRAMS," MR. SHENEFIELD SAYS.

15. THE ELEMENTS OF AN ANTITRUST COMPLIANCE PROGRAM ARE SIMPLE, ANTITRUST SPECIALISTS SAY, ALTHOUGH THEY EMPHASIZE UNCLASSIFIED

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THAT A PROGRAM SHOULD BE TAILORED TO FIT THE SPECIAL NEEDS OF EACH COMPANY. GENERALLY, THEY SUGGEST, A COMPLIANCE PLAN SHOULD INCLUDE EDUCATION OF COMPANY PERSONNEL ABOUT ANTITRUST MATTERS, A STATEMENT OF THE COMPANY'S ANTITRUST POLICY, INTERNAL PROCEDURES TO CARRY OUT THE POLICY AND A DOCUMENTATION SYSTEM FOR RELEVANT COMPANY RECORDS.

16. COMPANY MANAGERS--ESPECIALLY IN THE SALES, MARKETING, PLANNING AND PURCHASING AREAS--SHOULD BE THE PRINCIPAL TARGETS OF THE COMPLIANCE PROGRAM BECAUSE THEIR CONTACTS WITH CUSTOMERS AND COMPETITORS MAKE THEM VULNERABLE TO ANTITRUST PROBLEMS.

17. ANTITRUST SPECIALISTS--NOTABLY NEW YORK ANTITRUST ATTORNEY JERROLD VAN CISE AND MR. ANDERSON--GIVE THIS ADVICE TO MANAGERS:

18. REFER ALL MATTERS HAVING POTENTIAL ANTITRUST IMPLICATIONS TO COMPANY COUNSEL. THESE INCLUDE PRICE QUESTIONS, AGREEMENTS WITH DISTRIBUTORS OR SUPPLIERS, PATENT AGREEMENTS, MARKETING OF NEW PRODUCTS, ACQUISITIONS AND JOINT VENTURES AND REFUSALS TO DEAL WITH A PROSPECTIVE CUSTOMER.

19. REFUSE TO MEET WITH, OR TALK OVER THE TELEPHONE TO, A COMPETITOR OR COMPETITORS FOR ANY REASON UNLESS A COMPANY ATTORNEY OR OTHER PERSON IS PRESENT. IF YOU MUST DEAL WITH COMPETITORS, DON'T EXCHANGE OR DISCUSS ANY COMPETITIVE INFORMATION.

20. DON'T JOIN ANY TRADE ASSOCIATION OR GROUP WHOSE MEMBERS ARE COMPETITORS UNLESS THE ACTION IS APPROVED BY COMPANY COUNSEL. IF SUCH MEETINGS ARE ATTENDED, WALK OUT IF COMPETITIVE INFORMATION IS DISCUSSED OR EXCHANGED, UNCLASSIFIED

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AND REPORT THE ACTIONS TO COUNSEL.

21. DON'T PROVIDE ANY CUSTOMER WITH THE UNDERSTANDING THAT

THE CUSTOMER WILL SELL YOUR PRODUCT OR SERVICE ONLY AT CERTAIN PRICES OR IN CERTAIN MARKETS OR TO PERSONS SPECIFIED BY YOU. DON'T ARRANGE ANY EXCLUSIVE DEALING CONTRACT WITH A CUSTOMER OR AGREE TO PURCHASE A PRODUCT OR SERVICE IN EXCHANGE FOR HIS BUSINESS.

22. AVOID LOOSE, CARELESS OR FLIPPANT REMARKS, ESPECIALLY IN CORRESPONDENCE, THAT COULD POSE AN ANTITRUST PROBLEM IF EXAMINED OUT OF CONTEXT LATER. MR. LOUGHLIN URGES MANAGERS TO AVOID BRAGGING ABOUT THEIR COMPANY'S MARKET STRENGTH, ESPECIALLY IN TERMS OF EXPLOITING THE WEAKNESSES OF COMPETITORS.

23. MAINTAIN ALL CORRESPONDENCE AND RECORDS OF PRICING DECISIONS, ACQUISITIONS AND CONTACTS WITH CUSTOMERS AND COMPETITORS THAT MIGHT PRESENT AN ANTITRUST PROBLEM LATER.

24. FINALLY, MR. ANDERSON, PPG INDUSTRIES' FORMER COUNSEL, SUGGESTS THAT CORPORATE MANAGERS HEED UNCLE SAM'S SIMPLE WARNING AGAINST THE DANGER OF FIRE IN NATIONAL FORESTS: "AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE." END TEXT. VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DOCUMENTS, ANTITRUST, INVESTIGATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 09 may 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Document Unique ID: 00
Drafter: H A COCHRAN:EH
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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Handling Restrictions: n/a
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Legacy Key: link1978/newtext/t19780577/aaaacnml.tel
Line Count: 201
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Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 5b01b1a1-c288-dd11-92da-001cc4696bcc
Office: ORIGIN EA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
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Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2743815
Secure: OPEN
Status: NATIVE
Subject: VISIT OF US ANTITRUST OFFICIALS
TAGS: EGEN, JA, US, JUS
To: TOKYO
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/5b01b1a1-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014